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15 **IN THE UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 MATT FURIE,

18 Plaintiff,

19 vs.

20 INFOWARS, LLC; FREE SPEECH
21 SYSTEMS, LLC,

22 Defendants.

2:18-cv-01830-MWF-JPR

**PLAINTIFF MATT FURIE'S
RESPONSE TO DEFENDANTS'
STATEMENT OF ADDITIONAL
UNDISPUTED FACTS**

Date: May 6, 2019

Time: 10:00 a.m.

Hon. Michael W. Fitzgerald

Case Filed: March 5, 2018

Trial Date: July 16, 2019

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-2, Plaintiff Matt Furie submits the following Statement of Genuine Disputes of Material Fact in support of its opposition to Defendants' Motion for Summary Judgment.

**PLAINTIFF MATT FURIE'S
STATEMENT OF ADDITIONAL GENUINE DISPUTES
OF MATERIAL FACT**

DEFENDANTS' PURPORTED UNCONTROVERTED FACT	PLAINTIFF'S RESPONSE
<p>1. Mr. Furie stated in an interview with ION Magazine published in January 2011 that the characters he draws in his art are influenced either consciously or subconsciously by film and television characters he had seen previously.</p>	<p>Disputed. Mr. Furie is quoted in Alysa Lechner's article titled "SUPER FURIE ANIMALS" as responding to the question "Is your relationship with monsters any different now than it was when you were younger?" by saying "It actually hasn't really changed that much between then and now. In fact, last night I was watching a DVD of an old cartoon I used to watch called The Flight of Dragons—it's like a made-for-TV movie and John Ritter was one of the voices—and I realized that a lot of the dragons' faces and their characters as well as a wolf character and other different characters kind of influenced me, I guess. [Q.] Subconsciously? [A.] Yeah, I guess</p>

1		subconsciously, because a lot of those characters ended up looking like the ones that I draw now.”
2		
3		
4		<i>Evidence:</i> Furie Ex. 97 at FSS000153.
5	2. During his interview with ION Magazine,	Disputed. Mr. Furie’s quote in the cited article does not contain the emphasis added by Defendants. The substance of the quote is, however, reproduced accurately.
6	Mr. Furie was asked “There’s a ton of familiar characters seen in your drawings. For example,	
7	Freddie Krueger, Alf, Big Bird, etc . . . That	
8	being said, how does television culture influence your work?” He responded “When I was a kid I	
9	used to watch a shitload of television all the time	
10	. . . It’s just something that’s cultural. There are a	
11	lot of cultural signifiers, like everybody knows	
12	Freddie and Big Bird and they’re also things that	<i>Evidence:</i> Furie Ex. 97 at FSS000153.
13	I was into as a kid. I tend to go back to things that	
14	I was into as a kid when I draw because I just	
15	kind of enter that mind-frame when I sit down to	
16	draw. I don’t know whether it’s consciously or	
17	subconsciously but I just try to tap into that kid	
18	part of my brain.”	
19	3. On August 17, 2009, an anonymous user	Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis.
20	on the online forum <bodybuilding.com> using	
21	the name “Testament125” posted an image of	
22	Pepe the Frog with the text “not good man.”	
23		<i>Evidence:</i> Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802.
24	4. Following this initial publication, the “not	Disputed. This statement is hearsay only supported by documents not produced during fact discovery and
25	good man” image became a popular internet	
26	mememe known as the “Feels Bad Man,” “Sad	
27	Frog,” “You Will Never” meme, expressing	

<p>1 feelings of disappointment and regret. In other 2 words, this meme is the opposite of Pepe the 3 Frog's catchphrase "feels good, man."</p>	<p>should not be considered on that basis. Further, the image that became popular as the "Feels Bad Man," "Sad Frog," or "You Will Never" meme was created by Mr. Furie and published in <i>Boy's Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>10 5. In December 2010, the web site 11 <feelsbadman.com> was created, and at least as 12 early as January 2011 it displayed an essentially 13 identical copy of the "not good man" image, 14 though it was flipped and placed over a filter to 15 appear as though the viewer is looking at a 16 reflection of Pepe the Frog.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. The images of Pepe the Frog displayed on the website <i>feelsbadman.com</i> are copies and derivatives of an image created by Mr. Furie and published in <i>Boy's Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>23 6. On November 8, 2014, celebrity Katy 24 Perry posted a meme featuring Pepe the Frog on 25 her Twitter account.</p>	<p>Undisputed. However, the exhibit that Infowars cites and attaches in support of this statement is hearsay only supported by documents not produced during fact discovery and</p>

	<p>should not be considered on that basis.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802.</p>
<p>7. On December 18, 2014, celebrity Nicki Minaj posted on her Instagram account a meme featuring Pepe the Frog bending over, displaying a voluptuous frog posterior. This image used a flipped version of the “not good man” image for Pepe the Frog’s head.</p>	<p>The first sentence is undisputed. However, the exhibit that Infowars cites and attaches is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Disputed as to the second sentence. The image used was not the “not good man” image but was an image of Pepe the Frog created by Mr. Furie and published in <i>Boy’s Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>8. In an April 9, 2015 article on the use of Pepe the Frog by celebrities in memes, Vice.com’s publication Motherboard prominently displayed the “not good man” image.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Further, the image used was not the “not good man” image but was an image of Pepe the Frog created by Mr. Furie and in <i>Boy’s Club #1</i>.</p> <p>Evidence:</p>

	Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.
<p>9. On June 8, 2015, Youtube user Logan Hub published a video on <youtube.com> explaining the origins of Pepe the Frog. This video features an image of the “Sad Frog” meme which is an exact copy of “Pepe in Blue Shirt,” predating the latter’s alleged creation by close to a year.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Further, the image used was not the “Sad Frog” meme image but was an image of Pepe the Frog created by Mr. Furie and published in <i>Boy’s Club #1</i>. Even the caption of the Youtube video includes a reference to <i>Boy’s Club</i> as the usage and origins of the internet meme “Pepe the Frog.”</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131; Infowars Opp. Ex. 9 (Dkt. 95-11).</p>
<p>10. Google image searches for the terms “sad frog meme” and “feels bad man” restricted to the date range August 17, 2009 to April 11, 2016 display hundreds of images, the vast majority of which are images of the “not good man” image and memes based on this image.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Further, the images referenced are not of the “not good man” image but are based on an image of Pepe the Frog created by</p>

	<p>Mr. Furie and published in <i>Boy's Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>11. On April 21, 2015, Youtube user "Bettergamer404" posted a video on <youtube.com> featuring a compilation of "Sad Frog" memes showing reproductions and alterations of the "not good man" image.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Further, the images shown are not alterations of the "not good man" image but are based on the image of Pepe the Frog created by Mr. Furie and published in <i>Boy's Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>12. At 14 seconds, the "Bettergamer404" video shows one of the images Mr. Furie was commissioned to copy in his April 2016 and February 2018 licensing agreements with Fjerry LLC and What Do You Meme, LLC. This image is a version of the "not good man" image with slight alterations to the character's eyes and lips.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Fjerry LLC and What Do You Meme, LLC commissioned Mr. Furie to draw images of Pepe the Frog that resembled those included in the licensing agreement, which were themselves copies or</p>

	<p>derivations of Mr. Furie’s own images and character Pepe the Frog. Lastly, the images shown are not of the “not good man” image but are based on an image of Pepe the Frog created by Mr. Furie and published in <i>Boy’s Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 9 (Dkt. 88-13) at 40:21-24; 41:9-11; 147:19-24; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>13. Another image Mr. Furie was commissioned to copy in the Fjerry and What Do You Meme licensing agreements is a meme showing the “not good man” image atop a green body holding a book with the title “Reasons to Live.”</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Further, the images in the licensing agreements are not alterations of the “not good man” image but are based on an image of Pepe the Frog created by Mr. Furie and published in <i>Boy’s Club #1</i>.</p> <p>Evidence: Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131.</p>
<p>14. “Pepe in Blue Shirt” is not Mr. Furie’s original artwork. Rather, the face of Pepe the Frog in this work, as well as the color of the shirt,</p>	<p>Disputed. This statement is hearsay supported by documents not produced</p>

are nearly identical to the “not good man” image. The only difference is that “Pepe in Blue Shirt” has a slightly higher level of color and adds a largely featureless torso.

during fact discovery and should not be considered on that basis. In addition, Mr. Furie drew “Pepe in Blue Shirt.”

Evidence:

Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Ex. 2 (Dkt. 88-6) at FURIE_INFO_00000131; Furie Ex. 1 (Dkt. 85-1); Furie Ex. 48 (Dkt. 85-48) [Pl.’s Jan. 14, 2019 Response to Interrog. 10].

15. On October 4, 2016, The New Yorker published a cartoon featuring Kermit the Frog and Pepe the Frog, with the latter stating “Dude, being green is, like, the least of my problems right now.”

Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis.

Evidence:

Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802.

16. Mr. Furie attributes Pepe the Frog’s popularity as an internet meme to “[r]andom forces” and cannot explain the phenomenon of the character becoming a meme.

Disputed. What Mr. Furie actually said was: “A. To the best of my knowledge, I think in 2010 was when the meme phenomenon was kind of peaking for Pepe the Frog. Q. How would you say he became a meme? A. Random forces. Q. Like what random forces? Forces of nature? I’m not trying to be sarcastic. I just don’t understand. A. No. I understand. I can’t answer

	<p>the question. I’m not sure when.”</p> <p><i>Evidence:</i> Infowars Opp. Ex. 16 (Dkt. 95-18) at 48:3-12.</p>
<p>17. The U.S. Copyright Office notifies copyright applicants that a limitation of a claim for copyright is necessary where “the work submitted for registration contains an appreciable amount of unclaimable material,” including “material that was previously published.” It notes that “[d]erivative works almost always contain unclaimable material because, by definition, they are based on, or incorporate, material that has been previously published, previously registered, is in the public domain, or owned by a third party.”</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. In addition, the quotes that are included in this statement of fact are incomplete and do not accurately represent the Copyright Office’s notice in full.</p> <p><i>Evidence:</i> Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802.</p>
<p>18. Depictions of “El Sapo Pepe” were available on the internet at least as early as 2002 on album covers for songs featuring the character.</p>	<p>Disputed. This statement is hearsay only supported by documents not produced during fact discovery and should not be considered on that basis. Further, none of the referenced album covers refer to “El Sapo Pepe.”</p> <p><i>Evidence:</i> Fed. R. Civ. P. 37(c); Fed. R. Evid. 801, 802; Infowars Opp. Ex. 18 (Dkt. 95-20).</p>

1 Dated: April 22, 2019

Respectfully submitted,

2 By: /s/ Louis W. Tompros

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